

HAWKINS ACQUITTED FOR THE KILLING OF CHARLEY BARBER

End of the Murder Trial at El Paso

Some of the Testimony and Arguments of Attorneys—Testimony of Defendant.

With the arguments of Judge Edwards, the state closed its case in the Hawkins murder trial this morning. The jury was charged by Judge Harper at 2 o'clock and the twelve who hold the fate of the defendant in their hands, retired to consider the verdict.

The case began on Monday morning and has been hard fought from the beginning. The state was assisted in the prosecution by Victor Moore, Judge Edwards and Peyton J. Edwards, and the defendant was represented by Jackson, Lea and Ware. Every point has been closely contested and in the summing up charges and unfairness have been made by the counsel on both sides.

Judge Edwards made the closing arguments, in the summing up, at the finish of Dan Jackson address. During his appeal to the jury, he ridiculed the idea that Barber had been following Hawkins around to kill Hawkins and showed how in his belief Hawkins had stepped outside of the door when Barber came in the store, where Pedro Mesa, the Mexican who testified, claimed he saw Hawkins about one minute before the killing, put another cartridge into his gun and then came back into the store, walked up to Barber and shot him in the back.

Judge Edwards finished at noon and the jury was charged when the court convened after the recess.

Dan Jackson, of the defense, who made the first address when the court convened this morning made an impassioned appeal to the jury for his client. Jackson characterized as unfair the way Moore stood with his back to the jury when S. A. Sowel was describing on Moore's body where the bullet wounds were. Jackson said Moore was trying in a way to make the jury think that the first shots had been fired from the rear. The speaker said he did not blame Barber's father one iota for employing counsel and trying to have Hawkins punished, as blood was thicker than water. Jackson was very bitter in his remarks at the way the prosecution had conducted themselves and scored them in unmeasured terms.

J. M. Nealon who opened for the state in the afternoon, stated the difference between murder and homicide and defined the law in regard to them. He said he believed that Barber had been shot in the back by Hawkins and showed how in his opinion, the three wounds in the back demonstrated this. He said the fact that Hawkins went by Barber, when he was lying on the floor with his shirt sleeve afire and, in place of putting it out, called out "He's afire," showed that he had malice in his heart and that the shooting was not done in self defense. It was his belief that Hawkins had been guilty of a coldblooded murder, he said, and he asked for a verdict of murder in the first degree.

Thomas Lea, who made the first argument for the defense, was of the belief that the shooting was either one of self-defense or murder in the first degree; there could be no half-way opinion about it. He showed how Hawkins had stood abuse from Barber that any man with red blood in his veins would resent, and he said that if any one had ever called him one of the names that Barber had called Hawkins, he would have killed him on the spot. He showed how, in place of doing that, Hawkins, a peace officer, had respected his office and done nothing to resent the insults that Barber had given him. Lea stated that the cause of the trouble had not been what Hawkins had said about Barber and the poker game, but was the outcome of Hawkins being appointed deputy sheriff and trying to enforce the law. He told how Barber, in coming along the street on the way to the livery stable to get the horse to help Mann to load the cattle, had undoubtedly seen Hawkins go into the store and followed him in to abuse and humiliate him more.

He told how probably when Barber saw Hawkins coming toward him, Barber's anger kept getting greater and unconsciously Barber, although he had no gun, had reached for the place he was in the habit of carrying it and Hawkins thinking he was going to shoot, killed him.

W. J. Ware, of the defense who was the next to address the jury made a calm, clear exposition of the case from the side of the defendant, tracing the different events that had led up to killing and showing the malice and vindictiveness in the heart of Barber.

Victor Moore, of the state, who followed Mr. Ware, gave Hawkins a terrible arraignment in his remarks. Part of the time he was looking at the defendant and addressing his remarks to him. Hawkins, who all during the trial has been very calm and without a trace of nervousness, was affected by it, and his eyes began to rove as they had done at the preliminary hearing. Moore declared Hawkins was a coward, in his opinion, so cowardly he would not resent an insult, but waited until he got a chance as he did in the store, where all of those connected with it were his friends and shot Barber in the back. Moore, in closing, referred to Lea's reference to the family of the defendant and said that he pitied the wife and the two children sitting there, but that "no jury should allow a man who had committed a cowardly murder to go free on account of sympathy for the family."

Last Friday evening witnessed the close of the Hawkins murder trial at El Paso and the acquittal of Hawkins who killed Charley Barber in the store at Van Horn.

The evidence showed that Barber had Hawkins scared or in

the usual slang "buffaloed" that Barber had been insulting Hawkins whenever opportunity offered. The following is a part of the testimony for both prosecution and defense in the case:

At the conclusion of Beach's testimony, W. P. Hawkins, the defendant was called to the stand. He did not seem so nervous as he had been at the habeas corpus proceedings and made a much better witness, answering the questions put to him with less hesitation and more concisely.

He said the poker game which started the trouble between him and Barber had been played over a year ago, at which time he caught Barber cheating. When asked where he was at the time of the killing of Dan Williams he said:

"We were down at the river at the time when the matter of the poker game came up and I said Barber was a d— thief but, did not say he was a black— and had no mother."

"On the Sunday morning before the shooting, I had come to town to investigate some shooting that had taken place about three o'clock in the morning."

Fred Beach and I were talking in front of the Van Horn Trading company's hay house when Barber and Jess Cook came along and Barber told me to come around the corner of the building as he wanted to speak me. We all went around there and Barber said to me I hear you have been calling me a d— thief and a —. I told him that he could believe anything that he had heard and that I did not want any trouble with him. (Barber was about half drunk, so Hawkins said later in his testimony.)

Then Barber began to cuss and call me all kinds of names and wanted me to take off my coat and fight him and said he would pay my fine. During the cussing Cook patted Barber on the back and told him to go on and that he would pay Barber's fine.

Hawkins stated that Allen Hall had told him what Barber had said about what would happen if Hawkins ever came into the saloon to arrest any one while he was there.

Henry Cox testified that he knew the reputation of Barber to be that of a man who was not violent or dangerous.

J. Y. Canon the commissioner at Van Horn, testified that he had written to Sheriff Hall that he had better remove Hawkins or there would be a killing.

J. M. Formwalt, who at one time had been sheriff of Reynolds county, said he knew Barber to have a reputation of not carrying a gun or being a dangerous man.

The next witness Claude Young who lives here, said he was in the blacksmith shop in the rear store at the time of the killing. He heard the shots but did not go at once to the scene of the shooting. He said Barber was lying on his side when he went in the store and the shirt Barber had on was closed but as to whether it was buttoned he could not say.

E. K. Ficklen, who was present at the examination of the body, said the shirt was buttoned.

A. K. Plott, when asked to relate what happened when he came in from the side room, said: "I asked Charlie Hawkins what was the matter and he replied that the defendant had killed Barber, and Hawkins (the defendant) said, 'Yes, I killed

him; he was following me around to kill me and I turn myself over to you, but don't let on but as if you saw it all. Hawkins did not seem very much excited."

Jack Turner who was one of the party down on the river, in his testimony contradicted about all of the testimony that James Bean gave yesterday as to what was said down there by Hawkins.

Turner said Hawkins called Barber "a dirty, black, low down thief and a low down, dirty, black— and he has no mother. He has always lived with Mexicans and low whites."

The witness said they heard of the killing of Dan Williams while down on the river. He denied that he had said that Barber was a bad and dangerous man, but admitted he had said "that Dutchman will sure fight," "he heap no gottee scart," by which he explained he meant Barber was not a coward, but on Monday morning before the shooting, Hawkins said he met Barber and Barber called him a — and told him if he ever came into the saloon to arrest him that he would kill him. Hawkins said at that time he was on the way to the justice's office to get the warrant to arrest Barber for what he had said to him Sunday. Hawkins said:

"After I got the warrant I went down to the restaurant and started to read the warrant, but Barber made signs at me and told me I was too d— slow and made fun of me. Barber said: 'Cox or Dougherty will go my bond' and I told Dougherty that he was good on the bond. At this Cox began to cuss me and I told him I would arrest him if he did not stop, and Cox said: 'I will cuss all I want to in my own house.'"

"On the morning of the shooting" Hawkins said, "I was in the store talking with Charles Hawkins when Barber came in. Charlie went up to see what Barber wanted. Barber asked for some one, and Charlie told him that he had not seen the one he was looking for and came back to the rear of the store and went into the office. In the meantime Barber kept looking at me. When I got about up to him, Barber said: 'You—, I am going to kill you and made a reach towards his shirt. I said 'I heard,' and about that time I pulled my gun and commenced firing and emptied my gun at him."

When asked by Jackson why he shot Barber he said: "Because I thought he was going to kill me." After the killing the witness said he told Plott that he surrendered himself to him (Plott) not to let on but that he saw the whole affair because, as he explained yesterday he did not want a lot of tales to get around before the matter came to court.

The witness said: "I reloaded my gun and went out of the store by where Barber was lying on the floor. As I went by him I said: 'He's afire' and Plott got some water and put out the fire on Barber's sleeve. I then went home and sent a boy out for the Bean boys. They came in from the ranch and James Bean came to El Paso with me."

At the close of the argument the jury retired and brought in a verdict of acquittal within an hour.

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He Got What He Needed.

"Nine years ago it looked as if my time had come," says Mr. C. Farthing, of Mill Creek, Ind. Ter. "I was so run down that life hung on a very slender thread. It was then my druggist recommended Electric Bitters. I got what I needed—straight. I had one foot in the grave, Electric Bitters put it back on the turf again, and I've been well ever since." Sold under guarantee at Eddy Drug Company's store. 50c.

Notice of Suit.

In the District Court Eddy County New Mexico. T. B. Blair, Plaintiff, No. 99, -v-

W. L. Baird, Laura Jones, F. M. Etheridge, J. M. Jones, J. D. Jones, Monta J. Moore and John R. Griffin, Defendants.

To the defendants in the above cause, greeting:

You will take notice that there has been filed against you in the district court for the Fifth Judicial District of the Territory of New Mexico, within and for the county of Eddy, a suit by T. B. Blair, in a cause therein wherein T. B. Blair, is plaintiff and J. M. Jones, J. D. Jones, Monta J. Moore and John R. Griffin are defendants, and numbered 99 on the docket of said court. That said suit is now pending in said court.

That the general object of said suit is an action on a judgment for the sum of \$24,929.96, with interest from the 12th day of February, 1908, at the rate of ten per cent per annum and the further sum of \$3,833.88, with interest thereon from the 12th day of February, 1908, at the rate of six per cent per annum and to foreclose a lien to secure said indebtedness on certain property described fully in plaintiff's complaint and known as the A ranch property situated in the eastern part of Eddy County, New Mexico consisting of about 3,000 head of cattle branded with either one or the other of the following brands to-wit: < and others branded < and marked < also a head of saddle horses and a head of stock horses, including colts and their increase, most of which are branded < on the left thigh and all known as the horses belonging to the said A ranch; also ranch house, windmills, corrals, and fencing known as the property of the said A ranch, situated in the eastern part of Eddy County, New Mexico.

It is alleged that the defendants F. M. Etheridge, J. M. Jones, J. D. Jones, Monta J. Moore and John R. Griffin claim some right title or interest in the property on which it is sought to foreclose said lien, by the plaintiff, but that said claim is inferior and subject to the lien of said judgment, and that the transfers from the defendants Baird and Laura Jones to the other defendants, or through which they claim title to said property are void because of the want of power in the said defendants Baird and Laura Jones to convey the same, they being contrary to the terms of the contract of purchase from the plaintiff by the said Baird and Laura Jones and that such transfers were made without the consent or knowledge of the plaintiff.

Plaintiff prays in his complaint: a. That the defendants, F. M. Etheridge, J. M. Jones, J. D. Jones, Monta J. Moore and John R. Griffin be required to appear in this cause and establish what interest they have, if any in said property mentioned and described in this complaint, and that all transfers, bills of sale and mortgages affecting said property made to the defendants or either of them be held void and canceled by a decree of this court.

b. That the court find and ascertain the amount due from the defendants Baird and Laura Jones to this plaintiff upon said judgment.

c. That the court decree that the plaintiff has a lien upon the property described in this complaint for the security of the sum of money so found due him from the said defendants, Baird and Laura Jones, and the costs of this action.

d. That plaintiff's said lien be decreed superior to any claim, right or title of the defendants, F. M. Etheridge, J. M. Jones, J. D. Jones, Monta J. Moore and John R. Griffin, and each of them, in and to said property and that the right title and interest of the said defendants, F. M. Etheridge, J. M. Jones, J. D. Jones, Monta J. Moore and John R. Griffin and each of them, and any conveyances to them or either of them, or affecting said property be decreed subject to said contract, in copy of which has been heretofore referred to as "Exhibit A" attached to this complaint and plaintiff's lien retained thereon and in said contract.

e. That plaintiff's said lien be foreclosed, that said property, to-wit, said cattle, horses, windmills, corrals, house, ranch, fencing and all other property heretofore mentioned and which plaintiff retained a lien for the security of the amount due him on said notes and contract, as hereinbefore set out, be sold under the order and decree of this court and the proceeds applied to the payment of said indebtedness due plaintiff and costs of this suit.

f. That plaintiff recover costs of suit and have such other and further relief both at law and in equity as to the court shall be deemed proper in the premises.

You are further notified that if you fail to enter your appearance in said cause on or before the 25th day of July, 1908, judgment by default will be rendered against you in said cause and the allegations in plaintiff's complaint will be taken as confessed.

The names of plaintiff's attorneys are Bajac & Brice and their business address is Carlsbad, New Mexico.

Witness the Hon. William H. Pope, Associate Justice of the Supreme Court of the Territory of New Mexico and Judge of the Fifth Judicial District Court thereof, and the seal of said District Court this 3rd day of June A. D. 1908.

(Seal) S. I. ROBERTS, Clerk, by G. E. Benson, deputy.

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Notice of Sale by Special Master

In the District Court of Eddy County, New Mexico. E. F. Emerson, Plaintiff, No. 889

J. L. Emerson and Roberta Emerson, Defendants.

Whereas on the 23rd day of January, 1908 the District Court within and for the county of Eddy aforesaid in that certain cause therein pending, entitled and numbered as above, by its judgment and decree made and entered of record in said cause, entered judgment in favor of said plaintiff E. F. Emerson and against the defendant J. L. Emerson for the sum of \$2499.12, with interest and costs of suit; and

Whereas, it was further provided in and by said judgment and decree that in case said judgment, with interest and costs of suit be not paid to said plaintiff within ninety days from the date of said decree, then and in that case, the premises described in said decree, to-wit: Lots 7 and 9 in Block 25 of the Stevens Addition to the town of Eddy (now called Carlsbad) Eddy County, N. M. and all the right, title, interest and equity of redemption of said defendants and all persons claiming said premises by, through or under, then be sold at public auction, to the highest and best bidder, by the undersigned Special Master who was appointed in and by said decree for the purpose of making such sale; and

Whereas, more than ninety days have elapsed since the rendition of said decree, and said judgment, interest and costs of suit remain wholly unpaid;

Now, therefore, notice is hereby given that the undersigned Special Master will, on Saturday, the 12th day of July, 1908, between the hours of 9 o'clock A. M. and five o'clock P. M. of that day, at the front door of the Court House in the County of Eddy, Territory of New Mexico, sell at public auction, for cash in hand, to the highest and best bidder, the real estate in said decree described, as follows, to-wit: Lots Seven (7) and Nine (9) in Block Twenty-eight (28) in the Stevens Addition to the town of Eddy (now called Carlsbad) Eddy County, New Mexico, for the purpose of satisfying said judgment, interest and costs of suit.

J. D. WALKER, Special Master.